UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,352	12/07/2001	Takao Koyama	0445-0314P-SP	7870

2292 7590 04/22/2004

BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH, VA 22040-0747

EXAMINER	
TRUONG, LINH T	

ART UNIT	PAPER NUMBER
3761	8

DATE MAILED: 04/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/005,352	KOYAMA ET AL.	
	Examiner	Art Unit	
	Linh Truong	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

4a) Of the above claim(s) *8-19* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *1-19* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *4-6*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Election/Restrictions

This application contains claims directed to the following patentably distinct species of the claimed invention:

1. Species 1 is drawn to claims 1-7.
2. Species 2 is drawn to claims 8-13.
3. Species 3 is drawn to claims 14-19.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the

case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Joseph A. Kolash on 2 April 2004 a provisional election was made with traverse to prosecute the invention of Species 1, claims 1-7. Affirmation of this election must be made by applicant in replying to this Office action. Claims 8-19 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, and 5-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Kawano '5,382,246.

For claim 1, Kawano teaches a disposable diaper comprising a fluid-permeable topsheet 10, a fluid-impermeable backsheet 11, a fluid-retentive absorbent core 2, a second absorbent core 4 located on either side of the absorbent core 2, and an elastic member 3 disposed at the region where the second absorbent core is disposed along a longitudinal direction of the diaper (fig. 1 and 2, lines 21-52).

For claim 2, Kawano teaches a second elastic member 16 (fig. 6 and col. 4, line 30).

For claim 3, Kawano teaches an edge flap 14 on the outer region of the second absorbent core. Since the edge flap 14 encircles the lower, thinner part of the thighs of the user for a snug fit and the second absorbent core 4 encircles the upper, wider part of the thighs of the user and absorbs the bulk of the urine, it is inherent that the edge flap 14 has a larger shrinkage in the longitudinal direction (figs. 1 and 3).

For claim 5, Kawano teaches that the first absorbent core (2) and the second absorbent cores (4) are located away from each other (8).

For claim 6, Kawano teaches that an area 3 between the first absorbent core and each of the second absorbent cores are preferably between 5-10mm (col. 2, line 55) and the width of the second absorbent cores are 40-100mm (col. 4, line 17). And since the area between the first absorber and the second absorbent cores are made of the same materials (topsheet 10, backsheet 11, and flake-shaped pulp 9, fig. 2) as the second absorbent cores, it is inherent that the weight per unit area between the first

absorbent core and each of the second absorbent cores is ¼ or smaller than the weight per unit of each of the second absorbent cores.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kawano '5,382,246 .

For claim 4, Kawano discloses the claimed invention (14 is the leg flap and 16 is the elastic member) except for the specific ratios between the smallest and largest widths of the crotch region, the shortest distance between the leg portion elastic member and the edge of the leg flap portion and a shortest width of the crotch region, and between the outermost point of the leg flap portion and the innermost point of the longitudinal length of the crotch region. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the above mentioned specific ratios, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller,* 105USPQ 233.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kawano '5,382,246 in view of Mogor '3,575,174.

For claim 7, Kawano teaches a first absorbent core 2 and a second absorbent core 4 that is separated by elastic 3 (fig. 8) instead of an embossed line. Embossed lines are well known in the art to hold layers together, to section off regions, and to provide structural stability. Mogor teaches a sanitary pad with an absorbent core integrally connected to two separate cores (fig.5) by embossed lines 22 (col. 4, lines 27-30). Therefore it would have been obvious to one of ordinary skill at the time the invention was made to provide the invention of Kawano with integrally connected first and second absorbent cores separated by embossed lines for the structural integrity of the disposable diaper.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patents 4,657,539, 4,743,246, 5,464,402, 6,159,190, 6,315,766, 6,326,525, 6,328,724, 6,410,822, 6,436,079, and 6,492,574 are drawn to absorbent articles with two separate absorbent cores.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Linh Truong whose telephone number is 703-605-4974. The examiner can normally be reached on 8:30am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 703-305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Linh Truong

*** L.T.

JOHN J. CALVERT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700